

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 200554

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In the Matter of)	
AT&T Petition to Launch a Proceeding))	
Concerning the TDM-To-IP Transition))	
<hr/>)	GN Docket No. 12-353
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Petition of the National Telecommuni-))	
cations Cooperative Association for a))	
Rulemaking to Promote and Sustain the))	
Ongoing TDM-to-IP Evolution))	
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REPLY COMMENTS OF TELEPACIFIC COMMUNICATIONS

U.S. TelePacific Corp. and Mpower Communications Corp. (each d/b/a TelePacific Communications) ("TelePacific") respectfully submit these Reply Comments in response to the Public Notice issued by the Commission in the above-referenced docket.¹

Introduction and Summary

Many commenters, some of which are quoted below, agree with TelePacific that the underlying issue and the greatest defect of AT&T's proposals is that the TDM to IP transition is merely another technology change, which does not necessitate new dockets, new rules, nor new trial situations. Further,

¹ *Pleading Cycle on AT&T and NTCA Petitions*, GN Docket No. 12-353, Public Notice, DA 12-19999 (Wireline Comp. Bur. Dec. 14, 2012).

attempts to act on the proposals that ATT puts forward in this docket will lead to significant harm to competition, whereas the Commission could use this opportunity to support competition by recognizing the increased uses of copper to provide high speed broadband to business customers and by strengthening its copper retirement rules to provide protection to competitors and their customers for a long time to come.

The Controlling Issue is that the TDM to IP Transition is a Technology Change Which Does Not Change the Law or Require a Change in Commission Policy, Underlying Carrier Relationships or Network

As recognized by the State Members of the Federal-State Joint Board:

Wholesale interconnection obligations as enunciated in TA-96 and independent State laws remain unaffected by the evolving network technologies and the utilized communications protocols. The overriding legal principles continue to rest with Sections 251 and 252 of TA-96, 47 U.S.C. Sec. 251 and 252, that guarantee the seamless and reliable exchange of traffic between telecommunications carriers *irrespective* of the network telecommunications technologies and communications protocols that are being used.² (Bolded emphasis added; italicized emphasis in original)

Likewise, the National Association of Regulatory Utility Commissioners (“NARUC”) explains that:

On a broader level, AT&T also seems to be putting forth a novel construction that a change in the technology used to provide service from TDM to IP somehow converts a carrier’s network from providing voice and other telecommunications services, to something else. But **the shift to IP technology merely changes the technology for managing the existing network.** It no more creates a new category of regulation than did the conversion from electro-mechanical to electronic switches, the introduction of

² *Initial Comments by State Members of the Federal-State Joint Board on Universal Service*, GN Docket No. 12-353, WC Docket No. 10-90 (filed Jan. 28, 2013), p. 10.

multiplexers (which use packetized data), or the introduction of ISDN and frame relay services, which are also packet technologies.³ (Emphasis added.)

Unfortunately, the California Commission, in looking at 47 U.S.C. Sec. 251 and 252, incorrectly concludes that because one must be a provider of “telecommunications services” for those provisions to apply that the FCC must first determine whether VoIP services are such services.⁴ The definition of “telecommunications services,” however, 47 U.S.C. 153(46), **specifies** that a telecommunications service “means the offering of telecommunications for a fee directly to the public...**regardless of the facilities used**” and “telecommunications,” 47 U.S.C. 153(43), “means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” End-users of voice services do not experience a change in the information from what is sent or received, regardless of whether the call originates and/or terminates in IP.

Competition is Necessary to Innovation and Choice and Eliminating ILEC Regulation as AT&T Suggests Will Damage Competition

The Massachusetts Department of Telecommunications and Cable argues that before a complete transition to IP-based networks and services can be allowed, the FCC needs to resolve the recommendations of the National Broadband Plan regarding competition, specifically:

³ *Comments of the National Association of Regulatory Utility Commissioners*, WC Docket No. 12-353 (filed Jan. 28, 2013), p.16.

⁴ *Comments of the California Public Utilities Commission and the People of the State of California*, GN Docket No. 12-353 (filed Jan. 28, 2013), p. 14.

developing and acting on an effective analytical framework for wholesale access competition policies; just and reasonable special access rates, terms and conditions; clarifying interconnection rights and obligations particularly IP-to-IP interconnection; data roaming; and perhaps most immediately pertinent, ensuring appropriate balance in copper retirement policies.⁵

Cbeyond, et al.⁶ point out that:

The Commission has a rare opportunity to establish the preconditions for competition and innovation in the provision of broadband data and voice services to business customers for years to come. It can do so by establishing appropriately tailored competition policies (i.e., policies governing last-mile access to business customers and interconnection) for packet-mode services.

They also make clear that it is CLECs, not ILECs, that have been deploying Ethernet and other packet-mode, converged services to business customers, whereas the ILECs have “limited their Ethernet offerings to locations where competitors offer[] such services.”⁷ They conclude that only competition will stimulate continuing investment in packet-mode networks and that AT&T is merely trying by any means possible to utilize “changes in technology (driven largely by competitors) [to] justify eliminating competition and consumer protection policies.”⁸

The Ohio Commission agrees:

[N]ew regulations should not allow ILECs to flash-cut to all-IP networks, but rather, should provide for a reasonable period of transition...[which] will encourage needed investment by *all* carriers...[whereas] a flash-cut approach deters competition since it essentially quashes the ability of

⁵ *Comments of the Massachusetts Department of Telecommunications and Cable*, GN Docket No. 12-353, et al. (filed Jan. 28, 2013), p. 10-11.

⁶ *Comments of Cbeyond, Earthlink, Integra, Level 3, and TW Telecom*, GN Docket No. 12-353 (filed Jan. 28, 2013), p. 2.

⁷ *Id.*, at p. 3.

⁸ *Id.*, at pp. 3-4.

many service providers to offer and maintain services. Ultimately, consumers will suffer.⁹ (Emphasis in original)

To a Large Extent Competition Depends Upon Access to the “Last Mile,” and Copper Facilities, In Particular

COMPTEL put it well:

If competitors lose last mile access, either by allowing ILECs to decommission the copper loop or by continuing with rules governing packetized facilities that ignore modern reality, a substantial number of businesses (in particular small and medium size businesses) are likely to lose their existing broadband service and be left with no choice in service provider.¹⁰

Copper loops are the building block of communications networks, including IP-based networks, and with limited exceptions, ILECs have not built fiber directly to residences and small and medium sized businesses.

Consequently, copper -- whether as hybrid fiber/copper deployment or the continued use of copper from the central office to the end user premises -- will continue to be a significant part of the communications network for a long time.

Competitive companies have found ways to significantly increase the capacity of copper loops, as well as the broadband speeds that companies offer. Very high speed broadband over copper is now provided at a fraction of the cost of fiber and a fraction of the time to deploy new fiber.¹¹

⁹ *Comments Submitted on Behalf of the Public Utilities Commission of Ohio*, GN Docket No. 12-353 (filed Jan. 25, 2012), p. 7.

¹⁰ *Comments of COMPTEL*, GN Docket No. 12-353 (filed Jan. 28, 2013), p. 12.

¹¹ For more detail on the effectiveness of copper loops to serve businesses with high speed broadband and the need for more effective FCC copper retirement policies see *Comments of TelePacific Communications*, GN Docket No. 12-353 (filed Jan. 28, 2013), pp. 9-13, and *Ex Parte* filed in Docket 12-353, U.S. TelePacific Corp. d/b/a TelePacific Communications, Feb. 15, 2012, and *Ex Parte* filed in Docket 12,353, U.S. TelePacific Corp. d/b/a TelePacific Communications, et

Consequently, business customers increasingly are turning to these products, services they could lose if the Commission does not review and substantially improve its copper retirement rules.

Although copper is currently widely utilized by both CLECs and ILECs including the increasing use of copper to deliver high speed broadband, the Commission's copper retirement rules impede CLECs' ability to continue to use copper to provide services to their customers. Because there is no means to challenge or review an ILEC's retirement of copper in overbuild situations and there are only minimal procedural rules for copper distribution, when an ILEC proposes to retire copper, there is virtually no protection of the copper facilities that CLECs are already using, let alone those they may wish to use in the future.

Conclusion

TelePacific urges the Commission to: 1) Base its decisions in this docket on the fact that the transition from TDM to IP is merely another technological change, which does not affect statutory requirements, underlying carrier relationships nor even the composition of the communications network; 2) Consider the implications for severe harm to competition should the Commission grant AT&T's requests in this docket; and 3) Take immediate steps to protect the "last mile" access of CLECs, and their customers, to copper loops, in particular.

Respectfully submitted,

al., Request to Refresh Record and Take Expedited Action to Update Copper Retirement Rules to Promote Affordable Broadband Over Copper, Jan. 25, 2013.

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